

MARK SCHEME for the May/June 2008 question paper

9084/02	9084 LAW Paper 2, maximum raw mark 50
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This mark scheme is published as an aid to teachers and candidates, to indicate the requirements of the examination. It shows the basis on which Examiners were instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes must be read in conjunction with the question papers and the report on the examination.

- CIE will not enter into discussions or correspondence in connection with these mark schemes.

CIE is publishing the mark schemes for the May/June 2008 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.

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	GCE A/AS LEVEL – May/June 2008	9084	02

- 1 (a) The claim to the brooch will depend on applying Parker v. British Airways and deciding whether Fred has shown that he has exerted control over his house. As it is a private house it is likely that the court will say that Fred can claim the brooch. Gerry would rely on the doctrine of 'finders keepers'. In order to obtain the full range of marks candidates would be expected to include the principles of 'finders keepers', the issue of control and its application to the scenario, reference to and application of Parker. Candidates can obtain a maximum of 8 marks if there is no mention of Parker but they have applied its principles. Candidates can equally obtain a maximum of 8 marks if they address all relevant factors but omit the principle of control. Candidates will not be able to achieve more than 4 marks for simply quoting the source materials without reference to the scenario or application of the law. References to the LPA 1925 is not applicable to this question.
- (b) The better right to the money will lie with Gerry if the true owner does not come forward to claim it as there is less likelihood that the station authorities can show that they exerted sufficient control over the waiting room and anything found there. Candidates as with 1(a) would be expected to refer to the case of Parker, however if there is no specific reference to Parker but the candidate discusses the principles of the case and applies it to the scenario then they can achieve a maximum of 8 marks. To obtain full marks candidates would explicitly refer to Parker and its principles, applying it to the scenario set. As with 1(a) references to LPA 1925 is not applicable to this question.
- (c) Fred must return the shed as it forms part of the land under s.205 LPA. *Elitestone v. Morris* should be applied. If the candidate gives no legal authority but through discussion is able to come to the correct conclusion, they can obtain a maximum of 6 marks. Both sources would be expected to be referred to for this question and discussed in depth. If the candidate only refers to one or other of the sources the maximum mark achievable will be 8. If the correct authority is given and applied but the candidate comes to the incorrect conclusion some credit should be given for an attempt at legal application with the possibility of obtaining a maximum of 6 marks. Some credit should be given to candidates who refer to the trees in the context of whether or not they can be considered to be part of the property or able to be moved without being 'demolished'.
- (d) Any uncertainty in a statute is resolved by different rules of statutory interpretation such as the rules of language and the three rules of statutory interpretation. Good answers will include examples of when uncertainty can occur during the interpretation process, identification and discussion of the 3 approaches to interpretation and relevant cases to illustrate how they work in practice, comprehensive list of the different aids available to the judge including such things as internal and external aids, the presumptions and rules of language. Candidates who focus only on the rules/approaches of interpretation with relevant cases but none of the other points raised above will be limited to a maximum of 14 marks. This is not a precedent question therefore candidates who discuss precedent without any attempt to link it to statutory interpretation cannot be credited for this.

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- 2 (a) According to Article 8 everyone has a right to respect for his/her private and family life, his home and his correspondence. There is a violation here and *Douglas and others v. Hello* can be distinguished as there was no agreement with another magazine that the photographs could be taken. If candidates do not refer to any of the relevant authorities but are able to discuss some of the key principles to be applied they can obtain a maximum of 6 marks. If candidates refer to and apply/discuss either Article 8 or *Douglas* but not both, they can obtain a maximum of 8 marks, as both authorities are applicable to the scenario.
- (b) There is a violation under Article 8 but this can be justified according to the *Interception of Communications Act 1985* because the telephone calls are being intercepted in order to prevent or detect serious crime. Apply *Malone v. UK*. Candidates at the top end of the mark scheme (8-10 marks) will refer to and apply all three authorities referred to above and discuss the fact that the police believe it to be a serious criminal offence.
- (c) Under Article 8, there is a violation here that cannot be justified as there is no justification for the employers to intercept the employee's phone calls unless one argues that it safeguards the well being of the country. Apply *Malone v. UK [1984]* and *Interception of Communications Act 1985*. As with 2(b) candidates are expected to refer to and apply all three authorities. If there is no reference to any of the authorities but some general discussion of the issues candidates can obtain a maximum of 5 marks.
- (d) This question requires a full discussion of the reasons why the HRA was passed and the fact that the ECHR could only be pleaded if the claimant was prepared to take a case to Strasbourg. The limits on the effect should also be discussed; in particular it can only be pleaded against a public authority. Candidates will be credited for identification of specific articles and their effects, however if this is the only focus of their discussion without specifically addressing the HRA candidates can obtain a maximum of 12 marks. General discussion of the HRA without discussing its impact on UK law should be credited but may be limited to a maximum of 10 marks.